

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Atty Dkt. 620-149

LA THANGUE et al

C# M#

Serial No. 09/900,147

Group Art Unit: 1642

Filed: July 9, 2001

Examiner: YU, M.

Date: October 10, 2002

Title: PEPTIDE ANTAGONISTS OF DP TRANSCRIPTION FACTORS

RECEIVED

OCT 15 2002

TECH CENTER 1600/2900

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

RESPONSE/AMENDMENT/LETTER

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

Fees are attached as calculated below:

Total effective claims after amendment 0 minus highest number
previously paid for 20 (at least 20) = 0 x \$ 18.00 \$ 0.00

Independent claims after amendment 0 minus highest number
previously paid for 3 (at least 3) = 0 x \$ 84.00 \$ 0.00

If proper multiple dependent claims now added for first time, add \$280.00 (ignore improper) \$ 0.00

Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s) (\$110.00/1 month; \$400.00/2 months; \$920.00/3 months) \$ 0.00

Terminal disclaimer enclosed, add \$ 110.00 \$ 0.00

☐ First/second submission after Final Rejection pursuant to 37 CFR 1.129(a) (\$740.00) \$ 0.00

☐ Please enter the previously unentered, filed

☐ Submission attached

Subtotal \$ 0.00

If "small entity," then enter half (1/2) of subtotal and subtract -\$ 0.00

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee (\$180.00) \$ 0.00

Assignment Recording Fee (\$40.00) \$ 0.00

Other: Response 0.00

TOTAL FEE ENCLOSED \$ 0.00

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140. A duplicate copy of this sheet is attached.

1100 North Glebe Road, 8th Floor
Arlington, Virginia 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100
BJS:plb

NIXON & VANDERHYE P.C.
By Atty: B. J. Sadoff, Reg. No. 36,663

Signature: 

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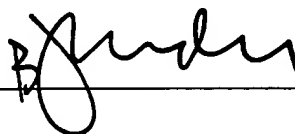
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Election/#7
J 10.17.02

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October 10, 2002

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

RESPONSE

Responsive to the Official Action dated September 10, 2002, the applicants elect, with traverse, the subject matter of the Examiner's Group I and the alleged separately patentable species of cytotoxic agent. Reconsideration and withdrawal of the restriction requirement are requested. ✓

The search of all the claimed subject matter will not be an undue burden on the Examiner and examination of all the claimed subject matter is requested. With regard to the Examiner's species election, the applicants believe the basis for the requirement is unclear and clarification is requested in view of the following. Specifically, the Examiner has stated that cytostatic and cytotoxic agents recited in claim 11 are patentably distinct because they have "different biological activities." See, page 3 of the Office Action dated September 10, 2002 (Paper No. 6). The applicants note that claim 11 refers

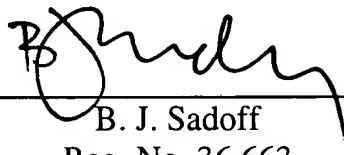
back to claim 10 which is directed to a pharmaceutical composition comprising the polypeptide of claim 1. Assuming this polypeptide is patentable, it is unclear how claim 11 contains two patentable distinct species. Moreover, the Examiner's basis for requiring the election is believed to be technically inappropriate. The Examiner is urged to appreciate that in any population of cells at any one time, some are static (i.e. are not undergoing the cell cycle) and a number are dying (by apoptosis or necrosis). Any antiproliferative agent will have an effect on the growth of this cell population. Usually, agents which tend to drive the balance towards cell cycle arrest are called cytostatic and those which drive the balance towards cell death tend to be called cytotoxic. However, in practice these agents have an effect on both cell cycle arrest and on cell death: the net effect depends upon many factors, including cell type, cell environment, concentration of anti-proliferative agent used. Therefore, the applicants believe that the differentiation of cytotoxic and cytostatic should not be the basis for defining separately patentable species and "cytotoxic use" cannot be regarded as a separate invention from "cytostatic use".

Reconsideration and withdrawal of the restriction requirement and examination of all the claimed subject matter are requested.

LA THANGUE et al
Serial No. 09/900,147

Respectfully submitted,

NIXON & VANDERHYE P.C.

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